



General Assembly

Fifty-third Session

39th plenary meeting

Friday, 16 October 1998, 10 a.m.
New York

Official Records

President: Mr. Operti (Uruguay)

In the absence of the President, Mr. Mangoela (Lesotho), Vice-President, took the Chair.

The meeting was called to order at 10.15 a.m.

Agenda item 158 (continued)

World Solar Programme 1996-2005

Draft resolution (A/53/L.8)

The Acting President: I have been informed that there are additional sponsors of draft resolution A/53/L.8: Afghanistan, Algeria, Angola, Austria, Bangladesh, Botswana, Burkina Faso, Cameroon, Cape Verde, Costa Rica, Croatia, Greece, Lesotho, Malta, the Marshall Islands, Myanmar, the Netherlands, Spain, the former Yugoslav Republic of Macedonia and Turkmenistan.

The Assembly will now take a decision on draft resolution A/53/L.8.

May I take it that the Assembly decides to adopt the draft resolution?

Draft resolution A/53/L.8 was adopted (resolution 53/7).

The Acting President: May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 158?

It was so decided.

If there are any delegations that still wish to sponsor the resolution that has just been adopted, they may sign up with the Secretariat.

Agenda item 166

Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

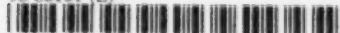
Letter from the President of the Security Council (A/52/1023)

Memorandum by the Secretary-General (A/53/351)

Curricula vitae (A/53/352)

The Acting President: The General Assembly will now proceed to the election of three judges to an additional Trial Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

By its resolution 1166 (1998) of 13 May 1998, the Security Council decided to establish a third Trial Chamber of the International Tribunal. It also decided that three additional judges should be elected as soon as



possible to serve in the additional Trial Chamber and that the judges so elected should serve until the date of expiry of the terms of office of the judges currently serving on the Tribunal, that is, until 16 November 2001.

In connection with the election, I should like to bring the following matters to the attention of the General Assembly.

First, in accordance with article 13, paragraph 2, of the Statute of the International Tribunal, the three judges of the third Trial Chamber of the International Tribunal shall be elected by the General Assembly from a list of candidates submitted by the Security Council.

At its 3919th meeting, on 27 August 1998, the Security Council, in accordance with article 13, subparagraph 2 (c) of the Statute of the International Tribunal, established in resolution 1191 (1998) a list of nine candidates, taking due account of the adequate representation of the principal legal systems of the world. The list was formally conveyed to the President of the General Assembly by a letter dated 27 August 1998 from the President of the Security Council. The letter was issued as document A/52/1023.

Secondly, in accordance with article 13, subparagraph 2 (d), of the Statute of the International Tribunal, the Holy See and Switzerland, being non-member States, shall participate in the election in the same manner as the States Members of the United Nations. On this occasion, I am happy to welcome here the representatives of the Holy See and Switzerland.

Finally, I should like to draw the attention of the Assembly to the documents relating to the election. The memorandum by the Secretary-General concerning the election of judges of the International Tribunal is contained in document A/53/351.

The list of candidates is to be found in paragraph 6 of document A/53/351.

The curricula vitae of the candidates are to be found in document A/53/352. In that connection, may I bring to the Assembly's attention article 13, paragraph 1, of the Statute of the International Tribunal, which reads as follows:

"The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for

appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law."

As representatives know, the election of judges will take place in accordance with the relevant provisions of article 13 of the Statute of the International Tribunal.

In addition, given the similar nature of the election of judge of the International Court of Justice and the election of judges of the International Tribunal, it was decided at the time of the previous elections of judges, in 1993 and 1997, to follow similar election procedures in the General Assembly. In his memorandum, the Secretary-General suggests that this precedent be applied to the election of judges of the third Trial Chamber of the International Tribunal.

May I take it that the Assembly agrees to that suggestion?

It was so decided.

The Acting President: In accordance with article 13, subparagraph 2 (d), of the Statute of the International Tribunal, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors, for this purpose, are all 185 Member States and the two non-member States, namely the Holy See and Switzerland.

Accordingly, 94 votes constitute an absolute majority for the purpose of electing judges of the International Tribunal.

If in the first ballot the number of candidates obtaining an absolute majority is less than three, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until three candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more

than three candidates less the number of candidates who have already obtained absolute majorities.

Following the practice in the election of judges of the International Court of Justice, the Secretary-General suggests in his memorandum that subsequent balloting should be unrestricted — I repeat, that subsequent balloting should be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for an eligible candidate who has not yet obtained an absolute majority.

It is further suggested that if in the first ballot more than the required number of candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting until the required number of candidates, and no more, obtain an absolute majority.

May I take it that the Assembly agrees to the procedures I have just outlined?

It was so decided.

Mr. Tello (Mexico) (*interpretation from Spanish*): Once again, the delegation of Mexico will not participate in the election of judges of the International Tribunal for the former Yugoslavia. Mexico has consistently held that, in establishing that Tribunal, the Security Council acted beyond its sphere of competence, since the Charter of the United Nations contains no explicit provision giving the Council the authority to create jurisdictional organs of this nature.

Mexico remains convinced that, once it is operational, the International Criminal Court, which was indeed established in conformity with the norms of international law, will render the creation of new special tribunals unnecessary.

This position notwithstanding, Mexico will continue to pay in timely fashion its assessed financial contribution to the Tribunal, strictly abiding by the decisions that the General Assembly has adopted on this matter.

The Acting President: I call on the representative of the Holy See.

Monsignor Panikulam (Holy See): The Holy See has closely followed the process leading to the establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International

Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

The Holy See, and especially Pope John Paul II, has unceasingly worked for the cessation of hostilities, the reconciliation of the parties and international humanitarian solidarity with all the victims, and has without any distinction condemned in the strongest terms the perpetrators of crimes, holding them responsible not only before the tribunal of God but also in the courts of human justice. From the beginning of the conflict, the Holy See has supported, especially within the Organization for Security and Cooperation in Europe (OSCE), the principle of the personal responsibility of the parties, and it therefore welcomes today the establishment of the International Tribunal as an instrument of the international community to express its condemnation of violations of international humanitarian law.

The Holy See equally welcomes the provisions of the Statute of the International Tribunal, as amended on 13 May 1998, in article 13, subparagraphs 2 (a) and (d), which acknowledge the Holy See's active participation in the establishment of the Tribunal, as a non-member State, maintaining a permanent observer mission at the United Nations.

However, the Holy See, in consideration of its specific nature and of its objectives as a sovereign international entity, and in accordance with recognized practice in similar cases, has decided to abstain from casting its vote on the individual candidates for the office of judge of the International Tribunal.

The Holy See expresses its confidence in the choices that will be made by the international community and its sincere best wishes for success to the elected judges in their service to the cause of justice. It is the hope of the Holy See that the persisting culture of impunity will soon be brought to an end and that all responsible for serious crimes in the territory of the former Yugoslavia, including those in Kosovo, will be brought promptly to justice.

The Acting President: We shall now proceed with the election.

The voting process has now begun.

Representatives are requested to use only the ballot papers now being distributed. Only those candidates whose names appear on the ballot papers are eligible for

election. Representatives will indicate the three candidates for whom they wish to vote by placing crosses to the left of their names on the ballot papers. Ballot papers on which more than three names are marked will be considered invalid. Votes may be cast only for those whose names appear on the ballot papers.

At the invitation of the Acting President, Ms. Tavora (Brazil), Ms. Pavlova (Bulgaria), Mr. Mwangi (Kenya) and Mr. Obeid (Syrian Arab Republic) acted as tellers.

A vote was taken by secret ballot.

The meeting was suspended at 10.45 a.m. and resumed at 11.40 a.m.

The Acting President: The result of the voting is as follows:

Number of ballot papers:	174
Number of invalid ballots:	0
Number of valid ballots:	174
Abstentions:	1
Number of members voting:	173
Required absolute majority:	94
Number of votes obtained:	
Mr. David Anthony Hunt (Australia)	38
Mr. Peter H. Wilkitzki (Germany)	74
Mr. Patrick Lipton Robinson (Jamaica)	70
Mr. Mohamed Bennouna (Morocco)	69
Mr. Húgo Aníbal Llanos Mansilla (Chile)	62
Mr. Per-Johan Viktor Lindholm (Finland)	46
Mr. Waldo Bandara Srinihal Wadugodapitiya (Sri Lanka)	40
Mr. Jan Skupinski (Poland)	28
Mr. Luis Valencia Rodríguez (Ecuador)	22

The Acting President: Since no candidate has obtained an absolute majority, the Assembly will have to proceed to another unrestricted ballot in order to fill the three vacancies.

Ballot papers are being distributed. All the candidates whose names appear on the ballot papers are eligible.

Once again, I remind representatives to place a cross at the left of the names of the three candidates for whom they wish to vote. Any ballot paper on which more than three names are marked will be considered invalid. Votes may be cast only for those whose names appear on the ballot papers.

Mr. Izquierdo (Ecuador) (*interpretation from Spanish*): My delegation, in order to facilitate the election, has decided to withdraw the candidacy of Ambassador Luis Valencia Rodríguez.

The Acting President: The representative of Ecuador has stated that one of the names on the list of candidates established by the Security Council should be removed. I take it that the representative of Ecuador is informing the General Assembly that his national has decided to withdraw his name from the list. On that understanding, the name of Mr. Luis Valencia Rodríguez of Ecuador will be removed from the next ballot.

Mr. Wyzner (Poland): With the same understanding as that of the representative of Ecuador and in the same spirit, I would like to inform the Assembly that the name of Mr. Skupinski should be removed from the ballot.

At the same time I would like to express regret that again this time, as a year ago, the region and school of law that Mr. Skupinski would have represented will not be represented in the Tribunal. I am afraid this will not help the Tribunal in its work.

The Acting President: From the representative of Poland's statement that one of the names on the list of candidates established by the Security Council should be removed, I take it that he is informing the General Assembly that his national has decided to withdraw his name from the list. On that understanding, the name of Mr. Jan Skupinski will be removed from the next ballot.

In view of the fact that the ballot papers will need to be revised in order to reflect the changes that have just been announced, we shall suspend the meeting for 10 minutes.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

The Acting President: The General Assembly will now proceed to another unrestricted ballot to fill the remaining three vacancies.

Ballot papers are now being distributed. All the candidates whose names appear on the ballot papers are eligible. Once again, I would remind delegates to place a cross at the left of the names of the three candidates for whom they wish to vote. Any ballot paper on which more than three names are marked will be considered invalid.

Votes may be cast only for those whose names appear on the ballot papers.

At the invitation of the Acting President, Ms. Tavora (Brazil), Ms. Pavlova (Bulgaria), Mr. Mwangi (Kenya) and Mr. Obeid (Syrian Arab Republic) acted as tellers.

A vote was taken by secret ballot.

The meeting was suspended at 12.15 p.m. and resumed at 1.20 p.m.

The Acting President: The result of the voting is as follows:

Number of ballot papers:	175
Number of invalid ballots:	1
Number of valid ballots:	174
Abstentions:	1
Number of members voting:	173
Required absolute majority:	94
Number of votes obtained:	
Mr. David Anthony Hunt (Australia)	113
Mr. Patrick Lipton Robinson (Jamaica)	98
Mr. Peter H. Wilkitzki (Germany)	87
Mr. Mohamed Bennouna (Morocco)	76
Mr. Húgo Aníbal Llanos Mansilla (Chile)	57
Mr. Per-Johan Viktor Lindholm (Finland)	30
Mr. Waldo Bandara Srinihal Wadugodapitiya (Sri Lanka)	19

The Acting President: Having obtained an absolute majority, Mr. David Anthony Hunt (Australia) and Mr. Patrick Lipton Robinson (Jamaica) are elected members of the International Tribunal to serve in the third Trial Chamber.

Ms. Rasi (Finland): In order to facilitate the voting process, I wish to request that the name of Judge Lindholm be deleted from the list.

The Acting President: Members have heard the statement just made by the representative of Finland. The name of Mr. Per-Johan Viktor Lindholm will be deleted from the ballot papers.

Mr. De Saram (Sri Lanka): In light of the results of the voting, I am withdrawing the name of the candidate of Sri Lanka, Mr. Wadugodapitiya.

The Acting President: The name of Mr. Waldo Bandara Srinihal Wadugodapitiya has been withdrawn and will be deleted from the list.

There remains one seat to be filled. The Assembly will now proceed to another ballot to fill the remaining vacancy. In accordance with the decision taken earlier, that ballot shall be unrestricted.

Ballot papers are being distributed. All candidates whose names appear on the ballot paper, except those who have just withdrawn, are eligible. Once again, I remind delegations that the name of only one candidate should be marked with a cross. Any ballot paper on which more than one name is marked will be considered invalid. Votes may be cast only for those whose names appear on the ballot papers.

At the invitation of the Acting President, Ms. Tavora (Brazil), Ms. Pavlova (Bulgaria), Mr. Mwangi (Kenya) and Mr. Obeid (Syrian Arab Republic) acted as tellers.

A vote was taken by secret ballot.

The meeting was suspended at 1.30 p.m. and resumed at 1.45 p.m.

The Acting President: The result of the voting is as follows:

Number of ballot papers:	173
Number of invalid ballots:	1
Number of valid ballots:	172
Abstentions:	1
Number of members voting:	171
Required absolute majority:	94
Number of votes obtained:	
Mr. Mohamed Bennouna (Morocco)	72
Mr. Peter H. Wilkitzki (Germany)	69
Mr. Húgo Aníbal Llanos Mansilla (Chile)	30

The Acting President: Since no candidate has obtained an absolute majority, the Assembly will have to proceed to another unrestricted ballot to fill the remaining vacancy.

Mr. Larraín (Chile) (interpretation from Spanish): In order to facilitate the election process, I should like to state that my delegation withdraws the name of Mr. Llanos Mansilla.

The Acting President: Members have heard the statement just made by the representative of Chile. The name of Mr. Húgo Aníbal Llanos Mansilla will be deleted from the ballot papers.

In view of the lateness of the hour, we will continue with the balloting this afternoon.

Mr. Maidin (Brunei Darussalam), Vice-President, took the Chair.

The meeting was suspended at 1.50 p.m. and resumed at 3.40 p.m.

The Acting President: The Assembly will now proceed to another unrestricted ballot to fill the remaining vacancy.

I should like to remind members that the representative of Chile announced earlier the withdrawal of his country's candidate, Mr. Húgo Aníbal Llanos Mansilla. Accordingly, the ballot papers to be distributed do not contain that name.

Ballot papers are being distributed. All the candidates whose names appear on the ballot paper are eligible. Once again, I remind delegations that the name of only one candidate should be marked with a cross. Any ballot paper on which more than one name is marked will be considered invalid. Votes may be cast only for those whose names appear on the ballot paper.

At the invitation of the Acting President, Ms. Tavora (Brazil), Ms. Pavlova (Bulgaria), Mr. Mwangi (Kenya) and Mr. Obeid (Syrian Arab Republic) acted as tellers.

A vote was taken by secret ballot.

The meeting was suspended at 3.50 p.m. and resumed at 4.05 p.m.

The Acting President: The result of the voting is as follows:

Number of ballot papers:	167
Number of invalid ballots:	0
Number of valid ballots:	167
Abstentions:	0
Number of members voting:	167
Required absolute majority:	94
Number of votes obtained:	
Mr. Mohamed Bennouna (Morocco)	98
Mr. Peter H. Wilkitzki (Germany)	69

The Acting President: Having obtained an absolute majority, Mr. Mohamed Bennouna (Morocco) is elected a member of the International Tribunal to serve in the third Trial Chamber.

The three judges so elected shall serve until the date of expiry of the terms of office of the judges currently serving on the Tribunal, that is, until 16 November 2001. The beginning of their terms of office will be determined by the President of the International Tribunal. The third Trial Chamber of the International Tribunal has thus been fully established.

I take this opportunity to extend to the judges the congratulations of the Assembly on their election and to thank the tellers for their assistance.

This concludes our consideration of agenda item 166.

The meeting rose at 4.10 p.m.